



U.S. House of Representatives
Committee on Transportation and Infrastructure

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July 10, 2007

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Hearing on Transportation Worker Identification Cards

PURPOSE OF THE HEARING

On Thursday, July 12, 2007, at 10:00 a.m., in 2167 Rayburn House Building, the Subcommittee on Coast Guard and Maritime Transportation will meet to examine the Transportation Worker Identification Credential ("TWIC") program. The TWIC program was established to ensure that transportation workers – in all modes – are not a "terrorism security risk". The Subcommittee is interested in learning about the administrative issues that have delayed the implementation of this program for years; and whether the appeal process for transportation workers realistically assesses the likelihood that the applicant poses a terrorism security risk.

BACKGROUND

The Maritime Transportation Security Act of 2002 ("MTSA") required the Coast Guard to develop a biometric transportation security identification card for maritime workers and any individual that would be granted unescorted access to a secure area of a port facility.

An individual could not be denied a TWIC card unless the Secretary determined that the individual had been convicted within the preceding seven years of a felony that the Secretary believes could cause the individual to be a terrorism security risk to the United States or for causing a severe transportation security incident, or if the individual has been released from prison within the past five years for causing one of those two types of violations. An individual could also be denied a TWIC card if the Coast Guard found that the individual "otherwise poses a terrorism security risk to the United States."

The SAFE Ports Act of 2006 required the Secretary to disqualify any individual who has been found guilty of treason, espionage, sedition, or terrorism from getting a TWIC.

The regulations prescribed to implement the TWIC regulations establish two sets of disqualifying crimes: “permanent disqualifying criminal offenses” and “interim disqualifying felonies”.

Individuals convicted or found not guilty by reason of insanity of the criminal offenses below are permanent disqualifying from receiving a TWIC:

- Espionage, or conspiracy to commit espionage.
- Sedition, or conspiracy to commit sedition
- Treason, or conspiracy to commit treason.
- A federal or State crime of terrorism, or conspiracy to commit such a crime.
- A crime involving a transportation security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. (Work stoppage, or other nonviolent employee-related action, resulting from an employer-employee dispute is not a transportation security incident.)
- Improper transportation of a hazardous material as defined in federal or State law.
- Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device, as defined by federal regulation.
- Murder.
- Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility.
- Violations of the Racketeer Influenced and Corrupt Organizations Act or any comparable State law, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the crimes listed above.
- Attempt to commit espionage, sedition, treason, or terrorism.
- Conspiracy or attempt to commit the remainder of the crimes above.

The criminal offenses listed below are “interim disqualifying felonies” IF (a) the applicant was convicted, or found not guilty by reason of insanity within 7 years of the date of application; or, the applicant was incarcerated for that crime and released from incarceration within 5 years of the application:

- Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transportation, delivery, import, export of, or dealing in a firearm or other weapon, as defined by federal regulation.
- Extortion.
- Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering where the money laundering is related to any of the list of permanently disqualifying crimes, or interim disqualifying crimes. (Welfare fraud and passing of bad checks do not constitute dishonesty, fraud, or misrepresentation of purposes of this paragraph.)
- Bribery.
- Smuggling.
- Immigration violations.

- Distribution of, possession with intent to distribute, or importation of a controlled substance.
- Arson.
- Kidnapping or hostage taking.
- Rape or aggravated sexual abuse.
- Assault with intent to kill.
- Robbery.
- Conspiracy or attempt to commit the crimes listed above.
- Violations of the Racketeer Influenced and Corrupt Organizations Act, or comparable State law other than the violations listed in the previous paragraph, for fraudulent entry into secure seaport areas.

Further, an applicant who is wanted for a crime; has an outstanding warrant; or indictment for a felony listed in either list above is disqualified until the want or warrant is released or the indictment is dismissed. If a fingerprint check reveals an arrest for a disqualifying crime without indicating the disposition, TSA will notify the applicant and provide instructions on how the applicant must clear the disposition. The applicant has 60 days to provide TSA with written proof that the arrest did not result in a conviction of a disqualifying crime.

An applicant may “appeal an initial determination of threat assessment based on criminal conviction, immigration status, or mental capacity”. TSA performs a paper work review of the material provided by the applicant. There are deadlines for supplying and requesting documents, and requests for extensions. Just how long this appeal process might take cannot be predicted because TSA can grant itself an extension of time ‘for good cause’.

If the applicant may also request a “waiver of criminal offenses, immigration status, or mental capacity standards”, but first must pay the fees for a TWIC and provide information demonstrating that he/she is not a terrorism security risk. TSA then considers the circumstances of the disqualifying act or offense, restitution made by the applicant, any Federal or State mitigation remedies, and court records or official medical release documents, or other factors that indicate the applicant does not pose a security threat warranting denial of the TWIC.

An applicant who is denied a TWIC may appeal to an Administrative Law Judge (ALJ). In the case of a mariner the request must be made to the ALJ Center in Baltimore, Maryland. Again the burden is on the applicant to prove that he/she is not a “terrorism security risk”.

The SAFE Port Act required TWIC to be implemented by 2008. TWIC has encountered numerous delays since 2002. The Transportation Security Administration (TSA) has awarded a \$70 million contract to Lockheed Martin to begin installing TWIC enrollment centers; however much of the infrastructure needed to handle the cards has yet to be put into place. TWIC cards were supposed to begin being issued in March in Wilmington, Delaware. Now it appears that this first cards will not be issued anywhere until fall. There is no firm schedule, but the Coast Guard regulations require transportation workers to obtain a TWIC card by September 2008.

When TSA begins issuing TWIC credentials it will be in selected locations and may require long travel by the applicant who must appear in person at least once to obtain the card.

The U.S. Department of Homeland Security published the final rule for the Transportation Worker Identification Credential program in January designed to enhance port security by checking the backgrounds of workers before they are granted unescorted access to secure areas of vessels and maritime facilities.

The rule lays out the enrollment process, disqualifying crimes, usage procedures, fees and other requirements.

The TSA and the U.S. Coast Guard held four public meetings around the nation and received more than 1,900 comments on the initial draft of the rule. Comments were filed by workers, port owners, port operators, small businesses and others who would be affected by the new program.

Specific measures include:

Security threat assessment. Applicants will undergo a comprehensive background check that looks at criminal histories, terrorist watch lists, immigration status and outstanding wants and warrants. If no adverse information is disclosed, TSA typically completes such an assessment in less than 10 days.

Technology. The credential will be a "smart card" containing not only visible information -- the applicant's photograph and name, an expiration date and a serial number -- but also an integrated circuit chip that will store the holder's fingerprint template, a PIN chosen by the individual, and a unique identifier.

Eligibility. Individuals lacking legal presence and immigration status in the United States, those connected to terrorist activity, and those convicted of certain crimes will be ineligible for this credential.

Use. During the initial rollout of the credential, workers will present their cards to authorized personnel, who will compare the holder to his or her photo, inspect security features on the card and evaluate the card for signs of tampering. The Coast Guard will verify the cards during inspections and during spot checks, using handheld readers to ensure credentials are valid. Until card reader technology is tested and a regulation issued on access control, however, facility owners and operators will not be required to use card readers for facility access.

Cost. The fee for the card will be between \$139 and \$159, and it will be valid for five years. Workers with current, comparable background checks -- including a hazardous materials endorsement on a commercial driver's license, a merchant mariner document or a Free and Secure Trade (FAST) credential -- will pay a discounted fee, between \$107 and \$127.

Biometric data. Applicants must provide a complete set of fingerprints and sit for a digital photograph. Fingerprint templates extracted from the biometric data will be stored on the card.

Privacy and information security. The entire enrollment record, including all fingerprints collected, will be stored in the secure TSA system. The "Trusted Agents" of any enrollment support vendors will have to undergo their own security checks before collecting workers' data. Once

enrollment is completed, all the individual's personal data will be deleted from the enrollment center work stations.

TWIC readers:

The Administration has not prescribed standards for "TWIC card readers". Those are devices that can read the biometric information on the TWIC card to verify that the individual that possesses the card is the individual to whom it was issued. The SAFE Port Act required the Coast Guard to prescribe TWIC card reader requirements based on the number of people on the vessel and the area of operation of the vessel. For example, a charter fishing boat operating on Chesapeake Bay with one licensed captain may not need to have a TWIC card reader. Operators of small vessels are very concerned about the cost and practicality of requiring TWIC card readers on their small vessels.

ISSUES

There remain several issues for the approximately 14 million transportation workers, including the 750,000 maritime workers, who will have to obtain a TWIC: when can they start obtaining their cards and where will they be able to get them; whether the disqualifying crimes included in the regulations accurately indicate an applicant's a terrorism security risk; what will a transportation worker have to do to prove that they are not a terrorism security risk to the transportation system; and will the control system adopted for commercial vessels be based on the terrorism risk of that vessel, or will it be a one-size-fits-all approach?

Many in the maritime sector have concerns about the process for "new hires" – people entering the maritime world for the first time. The current rules required that a "new hire" complete the application and pay the fees for a TWIC before the TSA will begin a background check to determine whether there is any risk. Industry would like to be able to check the potential mariner against the established data base at the same time they begin other screening, and allow a "new hire" to work on an interim basis while the finally processing is completed. Industry fears that the delay – and expense – of obtaining a TWIC will discourage potential workers from entering the industry at a time when much of the industry is desperately seeking workers.

Other segments of the maritime industry – particularly small passenger vessel operators are concerned about the impact anticipated delays in obtaining a TWIC will have on the hiring of seasonal workers, who in many cases work on vessels with short seasons. If they encounter any significant delays their season could be over before they get their credential. The news of delays could discourage many needed seasonal workers from returning to jobs that need to be filled.

There are persistent questions about whether the interim disqualifying crimes will prevent a transportation worker or 'new hire' access to a job in maritime transportation. The law establishes permanently disqualifying crimes – espionage, sedition, treason, and terrorism. However, the list of interim disqualifying offenses is established by regulation, and some question the relationship between these crimes and the assessment of the applicants risk as a terrorism security threat. The applicant must prove that those crimes do not make them a terrorism security risk.

WITNESSES

PANEL I

Rear Admiral Brian M. Salerno, USCG
Director, Inspection and Compliance
Coast Guard

Ms. Maurine Fanguy
TWIC Program Manager
Transportation Security Administration

PANEL II

Mr. Larry Willis
General Counsel
Transportation Trades Department, AFL-CIO

Mr. Mike Rodriguez
Executive Assistant to the President
International Organization of Masters Mates & Pilots

Mr. Thomas Allegretti
President
American Waterways Operators

Mr. Otto Candies III
Secretary & Treasurer for Otto Candies, LLC
Offshore Marine Services Association

Ms. Debbie Gosselin
Owner of Chesapeake Marine Tours/Watermark Cruises
Passenger Vessel Association

Ms. Tamara Holder
RAINBOW Push